

# PPM 320

## MEDIATION & APPEAL PROVISIONS

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**GENERAL REQUIREMENTS**

**320.01 AUTHORITY FOR SERVICE PROVISION DECISIONS**

**All decisions regarding the eligibility or ineligibility of each applicant for Vocational Rehabilitation Program participation, all decisions to provide or deny any particular vocational rehabilitation service to any applicant or eligible individual, and the approval or disapproval of program funding for all such services are the responsibility of the assigned Vocational Rehabilitation Counselor or other program representatives, consistent with current program policy and practice and applicable federal regulatory requirements, and cannot be delegated to any other individual or authority.**

**[REQUIRED PRACTICE. See also PPM 452.02 and PPM 600.01.]**

**320.02 RIGHT TO REQUEST A REVIEW OF PROGRAM DECISIONS AND ACTIONS**

Notwithstanding the authority reserved to the Vocational Rehabilitation Counselor and other Vocational Rehabilitation Program representatives under section 320.01, any applicant or eligible individual for vocational rehabilitation services who is dissatisfied with any decision made or action taken by a Vocational Rehabilitation Counselor or other program representative that denies, limits, or otherwise affects the vocational rehabilitation services received by the individual may request (or, if applicable, may request through his or her representative) a timely review of the disputed decision or action under the provisions described in this chapter.

**320.03 SCOPE OF THE REVIEW****(1) INELIGIBILITY DETERMINATIONS**

Any applicant determined to be ineligible for vocational rehabilitation services and any eligible individual subsequently determined to be no longer eligible for vocational rehabilitation services can challenge the ineligibility determination by requesting a review of that determination.

**(2) ADDITIONAL ISSUES SUBJECT TO REVIEW**

An applicant or eligible individual may also request a review under the provisions of this chapter of any other decision or action affecting the vocational rehabilitation services received, including, but not limited to:

(A) failure to provide any service deemed necessary for an assessment for determining eligibility and priority for services, including any service necessary for trial work experiences or an extended evaluation;

(B) the priority category to which an eligible individual is assigned, if the program is operating under an order of selection procedure as described in PPM chapter 430;

(C) failure to provide any service deemed necessary for an assessment for determining vocational rehabilitation needs and Individualized Plan for Employment (IPE) development;

(D) the denial of requested services to be provided under the IPE deemed necessary for the individual to prepare for, enter or reenter, or maintain the employment outcome specified in the plan, or any decision to terminate, suspend, reduce, or otherwise substantially modify any planned service;

(E) the timeliness or quality of vocational rehabilitation services provision; or

(F) any decision or action which the individual believes to be contrary to or inconsistent with the Rehabilitation Act of 1973, as amended, applicable federal or state regulations, the State Plan of the Vocational Rehabilitation Program, or the requirements described in this Policy and Procedure Manual (PPM).

### (3) STEPS IN THE REVIEW PROCESS

Subject to the provisions described in this chapter, the review process may include:

**(A) an informal supervisory review;**

(B) mediation;

(C) a formal appeal proceeding, comprised of—

(1) an impartial due process hearing and

(2) an impartial administrative review; and

(D) civil action.

## **320.04 NOTIFICATION OF REVIEW RIGHTS**

### (1) FORM AND CONTENT OF THE NOTIFICATION

Each applicant or eligible individual (or, as applicable, the individual's representative) must be notified of the right to request a review of Counselor and Vocational Rehabilitation Program decisions and actions as set forth in of this chapter. The required notification must be in writing

supplemented, if applicable, in the language or appropriate mode of communication of the individual's informed choice, and must, at a minimum, describe:

(A) the individual's right to seek resolution of disputed decisions and actions through an informal supervisory review, mediation, a formal appeal proceeding, and civil action, as described in this chapter;

(B) the manner in which requests for an informal supervisory review, mediation, a formal appeal, and civil action must be made, including the required form of the request, the individuals with whom requests must be filed and how such individuals may be contacted, and the timeliness requirements pertaining to such requests;

(C) the manner in which mediators and impartial hearing officers are selected; and

(D) the availability of the Client Assistance Program (CAP) to assist the applicant or eligible individual during mediation, the appeal process, and civil action, and how the CAP can be contacted for assistance.

## **(2) TIMELINESS OF THE NOTIFICATION**

The notification described in paragraph (1) of this section must be provided at the time an individual applies for vocational rehabilitation services, or not later than five business days following the date of application, and reference to the information contained in the initial notice must be provided thereafter:

(A) at the time the individual is assigned to a service priority category under the order of selection procedure, if the program is operating under an order of selection as described in PPM chapter 430; and

(B) when an Individualized Plan for Employment (IPE) is initially developed or subsequently amended; and

(C) upon the denial of any requested service or the termination, suspension, reduction, or other substantial modification of any particular vocational rehabilitation service previously agreed to or in progress;

(D) whenever a decision is made to close the record of services of the individual; and

(E) at any other time the individual or the individual's representative requests information with regard to the applicable policies and procedures.

*[REQUIRED PRACTICE. The notifications described in paragraph (1) of this section are contained in The Road To Work: An Employment Resource Guide handbook provided to each applicant. The required initial notification at the time of application is met by presentation to the applicant of the handbook and oral discussion of the applicable content. Subsequent notification requirements are met by reference to and review of, if appropriate, the same material at the times indicated in paragraphs (2)(A) through (E).]*

### **320.05 QUALIFICATIONS FOR MEDIATORS AND IMPARTIAL HEARING OFFICERS**

#### **(1) QUALIFIED AND IMPARTIAL MEDIATORS**

Mediation sessions can be facilitated only by individuals who:

(A) meet all of the requirements of the definition for the term "qualified and impartial mediator" described in PPM chapter 200, are attorneys in good standing with the Supreme Court of Indiana, and have completed at least 40 hours of certified civil mediation training; and

(B) have been selected **on a random basis** from a list of qualified and impartial mediators maintained by the Vocational Rehabilitation Program in accordance with procedures which assure the impartiality of the mediator assigned.

#### **(2) IMPARTIAL HEARING OFFICERS**

Impartial due process hearings can be presided over only by individuals who:

(A) meet all of the requirements of the definition for the term "impartial hearing officer" described in PPM chapter 200; and

(B) have been selected **on a random basis** from a list of impartial hearing officers established and maintained with the full consultation of the

Commission on Vocational Rehabilitation and in accordance with selection procedures which assure the impartiality of the hearing officer assigned.

*[REQUIRED PRACTICE. The lists of qualified and impartial mediators and impartial hearing officers maintained by the Vocational Rehabilitation Program may include individuals who serve as mediators, hearing officers, or both mediators and hearing officers, except that the same individual cannot be assigned to conduct both mediation and an impartial due process hearing with respect to the same review.]*

### **320.06 ACCESSIBILITY REQUIREMENTS**

All informal supervisory reviews, mediation sessions, and impartial due process hearings must be scheduled for times and places accessible and reasonably convenient for the parties. Reasonable accommodations necessary for the parties to access and participate fully in informal supervisory reviews, mediation, and impartial due process hearing sessions (such as interpreting or reading services) must be arranged and provided.

*[REQUIRED PRACTICE. If any party requires disability-related accommodations in order to attend and participate in any supervisory review, mediation, or impartial due process hearing, the party must notify the presiding Area Supervisor, mediator, or impartial hearing officer at least five business days prior to the scheduled proceeding. The proceeding will be rescheduled, if necessary to satisfy the requirements of this section.]*

### **320.07 RIGHT TO LEGAL REPRESENTATION FOR DUE PROCESS HEARINGS**

Either or both parties to impartial due process hearings may be represented by counsel or any other advocate or representative(s) of their informed choice; however, if the applicant or eligible individual intends to be represented by legal counsel, written notice of the intent to have legal representation must be provided to the Director of the Vocational Rehabilitation Program not less than **five** business days prior to the scheduled mediation or impartial due process hearing.

*[REQUIRED PRACTICE. Impartial due process hearings may be rescheduled, if necessary to satisfy the requirements of this section.]*

**320.08 RESCHEDULING PROVISIONS**

Any informal supervisory review, mediation, or impartial due process hearing may be cancelled and rescheduled in order to satisfy the requirements of sections 320.06 or 320.07 of this chapter, or to accommodate the needs of any party who is unable for good cause to appear, provided that:

**(1) the request is made not less than three business days prior to the date originally scheduled and that all parties are subsequently notified of the cancellation and rescheduling at least 24 hours prior to the date originally scheduled; and**

**(2) the informal supervisory review, mediation, or impartial due process hearing is rescheduled for the earliest date possible, subject to considerations of the situation and the availability of the parties.**

**320.09 CONTINUITY OF SERVICES DURING THE REVIEW**

No disputed decision to terminate, suspend, reduce, or otherwise substantially modify any service currently being provided to the individual will be implemented until a final resolution of the issue has been achieved through the provisions described in this chapter, unless:

(1) the individual or the individual's representative requests the termination, suspension, reduction, or modification; or

(2) the Vocational Rehabilitation Program has evidence that the services in question have been obtained through willful misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

**320.10 RESPONSIBILITY FOR MEDIATION AND APPEAL COSTS**

**All costs of mediation and appeal proceedings must be paid for by the Vocational Rehabilitation Program, except that the program:**

**(1) will not pay for or reimburse any of the costs of legal representation for an applicant or eligible individual in connection with any review proceeding;**



(2) will not compensate the individual or his or her representatives or witnesses for wages, time, or other benefits lost as a consequence of participating in any review proceeding;

(3) is not obligated to pay or reimburse the individual for the costs of securing any evidence other than that on which the disputed decision or action has been based and which is already present in his or her record of services at the time of the disputed decision or action; and

(4) will not pay for the transcription costs of, or transcribe, audio taped appeal proceedings for any party other than the individual, when necessary due to the nature or scope of the individual's disability.

***[REQUIRED PRACTICE. The Vocational Rehabilitation Program will bear the costs of copying existing Vocational Rehabilitation Program materials from the record of services and other sources requested by the individual or the individual's representative for presentation as exhibits for mediation or appeal proceedings, and may arrange for interpreting and other appropriate and necessary accommodations at the program's expense. However, the Vocational Rehabilitation Program bears no responsibility for, and will provide no compensation to the individual, the individual's representatives, or witnesses appearing on the individual's behalf (including, but not limited to, the costs of legal or other representation, lost pay, the costs of transportation, per diem, or any other form of consideration). Nor does the program have any obligation to purchase or reimburse the individual for the cost of obtaining any new information (e.g., a second or subsequent opinion) that is not already present in the record of services and which is in addition to the information on which the program has based the decision or action in dispute. Audio recordings of impartial due process hearings will be copied and provided for the individual or representative on request, but the Vocational Rehabilitation Program will not provide transcription services to produce written transcripts of recorded hearing materials, except for the individual or representative alone, and when required as a disability-relevant accommodation. All expenses authorized by the Vocational Rehabilitation Counselor to be paid for or reimbursed by the Vocational Rehabilitation Program pertaining to mediation and appeal proceedings must be recorded and explained in the individual's record of services by required fiscal documentation and appropriate case notations.]***

**320.11 DISCUSSION WITH THE VOCATIONAL REHABILITATION COUNSELOR**

Nothing in this chapter is to be construed to prohibit any applicant or eligible individual from seeking to resolve any question, issue, or concern regarding the Vocational Rehabilitation Program or the services received within the usual and customary counseling and guidance relationship with his or her Vocational Rehabilitation Counselor.

***INITIATION AND PROCESSING OF REQUESTS*****320.12 INITIATING PARTY**

A request for mediation and/or appeal can be made only by an applicant or individual eligible for vocational rehabilitation services, or by the representative of the applicant or eligible individual. Neither mediation nor appeal remedies are extended to any individual prior to application or to any individual whose record of services has been closed for more than 15 **business** days prior to any request for review being made.

**320.13 RESPONSIBILITIES OF THE COUNSELOR**

The Vocational Rehabilitation Counselor is required to:

(1) notify the individual or his or her representative promptly whenever any decision is made or an action is taken to deny, terminate, suspend, reduce, or otherwise substantially modify services planned or being provided (including, but not limited to, any determination that the individual is ineligible or no longer eligible for services), the reason for the decision or action, and the right of the individual to request a review of the decision or action; and

(2) provide the notifications required under section 320.04 of this chapter;

(3) notate in the individual's record of services the date on which the individual or the individual's representative was first provided the information required in paragraphs (1) and (2) of this section.

**320.14 RESPONSIBILITIES OF THE INDIVIDUAL OR REPRESENTATIVE**

To initiate a request for review of any disputed decision or action, the individual must, within 15 business days of the notification described in section 320.13 of this chapter, submit in writing, signed by the individual or the individual's representative and dated, a request for review, addressed to the Area Supervisor of the local Vocational Rehabilitation Program office at which the individual is served.

*[REQUIRED PRACTICE. The written request described in this section will be deemed to have been submitted as of its mailing date, as determined by the postmark or, if delivered in person by the individual or his or her representative, as of the date presented. The determination as to the timeliness of the request described in this section will be made on the basis of comparison of the notification date entered into the record of services in accordance with section 320.13(3) of this chapter and the date upon which the request for review is mailed or presented in person to the Area Supervisor or designee. All requests, whether mailed or presented in person, must be date stamped by the receiving office as of the date received. The 15 business day limitation described in paragraph (3) of this section will be strictly observed, and no exception will be made for requests not made in a timely manner.]*

**320.15 RESPONSIBILITIES OF THE AREA SUPERVISOR OR DESIGNEE****(1) DETERMINATION OF TIMELINESS**

Upon written notification of any request for review, the Area Supervisor or a designee must determine whether or not the request for review is timely in accordance with the requirements described in section 320.14, and must:

(A) if the individual's request for review was received in a timely manner, meet with the individual (and, if applicable, the individual's representative) to discuss the options available for review of the disputed decision or action; or

(B) if the individual's request for review was not received in a timely manner, notify the individual (or the individual's representative) in writing, supplemented as applicable by other appropriate modes of

communication and at the earliest possible date, but not later than five business days from the date on which the request was received, that the request for review was not timely and that a review will not be scheduled.

*[REQUIRED PRACTICE. Area Supervisor designees selected under the provisions of this section must be the Region Manager for the Area or an experienced Counselor employed by the Vocational Rehabilitation Program serving in the appropriate local office (but cannot be the individual's assigned Counselor).]*

## **(2) MEETING WITH THE INDIVIDUAL**

The meeting required in accordance with paragraph (1)(A) of this section must be scheduled and take place as soon as possible, but within five business days of the date on which the request for review was received, unless the individual or the individual's representative requests a later date, and:

(A) must be conducted in person;

(B) must provide an opportunity during the meeting for an informal supervisory review, as described in sections 320.18 through 320.20 of this chapter;

(C) if an informal supervisory review is declined by the individual or the individual's representative, or occurs but fails to resolve any disputed issue, must provide information and guidance regarding the appeal process provisions and procedures (including, but not limited to, the necessary steps, options, and timeliness requirements of the process); and

(D) if the individual or representative requests mediation or an appeal, must result in a completed Request for Mediation and Appeal form.

*[REQUIRED PRACTICE. The Area Supervisor, or his or her designee, is responsible for assuring that all of the requirements described in this section are met, and must notate the individual's record of services as to their having been met. The Request for Mediation and Appeal form required under paragraph (2)(D) of this section must be accurately completed by the Area Supervisor or designee]*

*in consultation with the individual or the individual's representative, and must include: (1) the tracking number required for mediation and appeal process purposes; (2) the individual's name, mailing address, telephone number, and any other applicable contact information; (3) the assigned Vocational Rehabilitation Counselor's name, office address, office telephone number, and other applicable contact information; (4) an indication of whether or not the individual or the individual's representative is requesting mediation; (5) identification of the disputed decision(s) or action(s) that the individual or representative wishes to be reviewed; and (6) the dated signature of the individual or the individual's representative.]*

### **(3) REQUIRED ACTIONS SUBSEQUENT TO MEETING WITH THE INDIVIDUAL**

Following the meeting described in paragraph (2) of this section, the Area Supervisor or his or her designee must, within one business day of the date on which the meeting was concluded:

**(A) if mediation has been requested by the individual or the individual's representative—**

**(1) discuss the request with the assigned Vocational Rehabilitation Counselor and determine whether or not the Counselor and Area Supervisor are agreeable to mediation,**

**(2) if the Counselor and Area Supervisor are disposed to decline a requested mediation, consult with the appropriate Region Manager as to his or her agreement with the decision of the Counselor and Area Supervisor,**

**(3) indicate on the Request for Mediation and Appeal form that the request for mediation has been accepted or, if applicable, that it has been declined with the concurrence of the Region Manager;**

**(B) sign and date the completed Request for Mediation and Appeal form and assure that copies of the form are provided to the individual or representative for his or her records and to the assigned Vocational Rehabilitation Counselor for inclusion in the individual's record of services, and that the original is mailed to the office of the Director of the Vocational Rehabilitation Program.**

**320.16 RESPONSIBILITIES OF THE DIRECTOR**

Upon the receipt of a completed Request for Mediation and Appeal form by the Director of the Vocational Rehabilitation Program, the Director or his or her designee will, within **three** business days:

(1) if mediation has been requested and consented to by VRS, assign a mediator by random selection to facilitate mediation and notify the assigned mediator of his or her selection;

**(2) if mediation has been requested but has been declined by VRS, send written notification to the individual or his or her representative by mail that mediation has been declined and that the review process will proceed directly to an impartial due process hearing; and**

(3) regardless of whether or not mediation has been requested and agreed to, assign an impartial hearing officer by random selection to conduct an impartial due process hearing and notify the assigned hearing officer of his or her selection.

**320.17 SCHEDULING OF MEDIATION AND IMPARTIAL DUE PROCESS HEARINGS**

(1) Upon notification of their selection, the qualified and impartial mediator will schedule mediation and the impartial hearing officer will schedule an impartial due process hearing, and each will communicate the date, time, location, and preparatory instructions, as applicable, in writing to the individual or the individual's representative, the Counselor, the Director of the Vocational Rehabilitation Program, and any other parties involved.

(2) The impartial due process hearing must be completed as soon as possible, but not more than 60 calendar days following the date on which the completed Request for Mediation and Appeal form is received by the Director of the Vocational Rehabilitation Program or his or her designee, as per section 320.16 of this chapter, unless the parties mutually agree to an extension of specified duration. Any mediation must be scheduled and occur prior to the impartial due process hearing.

*[REQUIRED PRACTICE. In the event of any agreement to extend the impartial due process hearing later than 60 calendar days following the date on which the completed*

*Request for Mediation and Appeal form is received by the Director or his or her designee, the duration of the extension and the agreement of both parties must be clearly documented in the record of services for the individual.]*

### **INFORMAL SUPERVISORY REVIEW**

#### **320.18 AVAILABILITY OF THE REVIEW**

**An informal supervisory review is available on request by any applicant or eligible individual who disputes any decision made or action taken by the assigned Vocational Rehabilitation Counselor with respect to services received.**

*[REQUIRED PRACTICE. Applicants and program participants are encouraged to request an informal supervisory review of any unresolved issues with the appropriate Area Supervisor at any time, whether prior to or during mediation or appeal. Notwithstanding the availability of these informal means to resolve any issue that arises, however: (1) an informal supervisory review with the Area Supervisor cannot be required as a precondition for access to the mediation and appeal provisions described in this chapter, and the individual or his or her representative may elect to proceed directly to mediation or an impartial due process hearing; and (2) the Area Supervisor must assure that informal dispute resolution does not impede or delay the individual's timely access to mediation or appeal remedies, unless a resolution of the individual's issues and concerns is achieved through informal means.]*

#### **320.19 CONDUCT OF THE REVIEW**

**Informal supervisory reviews must be conducted by the Area Supervisor of the local Vocational Rehabilitation Program office in which the individual is served or with the Area Supervisor's designee, and must include the individual and, as applicable, the individual's representative.**

#### **320.20 OUTCOME OF THE REVIEW**

**Based on the nature and scope of the disputed decision(s) or action(s) and applicable program policy and practice, the Area Supervisor may uphold or reverse the decision(s) made or action(s) taken by the Vocational Rehabilitation Counselor, uphold or reverse the decision(s) made or action(s) taken by the Counselor with**

**modifications or conditions, or make any alternative decision(s) or take alternative action(s) consistent with program policy and practice.**

## **MEDIATION**

### **320.21 VOLUNTARY PARTICIPATION IN MEDIATION**

Mediation is voluntary on the part of both the individual and the Vocational Rehabilitation Program and will be provided only upon request of the individual or the individual's representative and the agreement of the assigned Vocational Rehabilitation Counselor or other Vocational Rehabilitation Program authority to participate.

*[REQUIRED PRACTICE. If either the individual (or the individual's representative) or the assigned Vocational Rehabilitation Counselor (or other responsible Vocational Rehabilitation Program representative) does not agree to enter into mediation, a mediator will not be assigned, mediation sessions will not be scheduled, and the issue in dispute must proceed directly to the formal appeal process through an impartial due process hearing. Although mediation is the preferred means for dispute resolution, there are legitimate reasons for dispensing with mediation, among which are the informed choice of the individual to decline the offer of mediation and the inability of Vocational Rehabilitation Program staff to negotiate or compromise program policies or procedures lawfully required; however, if the individual or the individual's representative requests mediation, **the Vocational Rehabilitation Counselor can decline mediation only with the concurrence of the appropriate Region Manager. The Counselor's refusal to mediate and the concurrence of the Region Manager must be entered into the record of services by appropriate documentation and noted by the Area Supervisor or designee on the Request for Mediation and Appeal form (see section 320.15(3)(D) of this chapter).***

### **320.22 NATURE AND SCOPE OF MEDIATION**

(1) Mediation is an informal, non-adversarial, and voluntary process the purpose of which is to provide an opportunity for the parties to a disputed decision or action to reach a mutually acceptable resolution through discussion and negotiation.

(2) Mediation must occur prior to the scheduled date of any impartial due process hearing.

*[REQUIRED PRACTICE. Mediation must be scheduled so as to occur prior to any impartial due process hearing and to allow the completion of both mediation and, if needed, an impartial due process hearing within 60 calendar days from the date on*



*which the completed and signed Request for Mediation and Appeal form was received by the Director of the Vocational Rehabilitation Program, or within the extended period of time agreed to in accordance with section 320.17(2) of this chapter.]*

(3) If mediation is requested and agreed to by both parties, the mediation process will neither eliminate nor delay the impartial due process hearing, unless a resolution of all disputed matters is achieved through a mediation agreement, as described in this chapter.

### **320.23 FUNCTIONS OF THE MEDIATOR**

Mediation sessions must be facilitated by a qualified and impartial mediator; **however the functions of the mediator are only to facilitate the mediation process by helping the parties understand the issues, enter into good faith problem-solving efforts, identify common ground, and explore settlement alternatives. Decision-making authority in mediation sessions rests with the parties to the dispute; not with the mediator.**

### **320.24 CONFIDENTIALITY OF MEDIATION DISCUSSIONS**

All discussions that occur during mediation are confidential and cannot be used as evidence in any subsequent impartial due process hearing or civil proceedings. The parties will be required to sign a confidentiality statement before beginning the mediation process.

### **320.25 TERMINATION OF MEDIATION WITHOUT AN AGREEMENT**

Either party or the mediator may elect at any point during the mediation process to terminate mediation efforts without any agreement or only a partial agreement regarding the matters in dispute and pursue resolution of the remaining issues through an impartial due process hearing, as described in sections 320.28 through 320.35 of this chapter.

### **320.26 MEDIATION AGREEMENT**

If agreement is reached as a result of mediation on all or any part of the issue(s) in dispute, the mediator will set forth the terms in a written mediation agreement. The signed mediation agreement may resolve all or only a portion of the issues in dispute. The agreement must be signed by

both parties, and copies of the agreement must be provided to both parties, the assigned impartial hearing officer, and the Director of the Vocational Rehabilitation Program.

### **320.27 FINALITY OF THE MEDIATION AGREEMENT**

(1) If the mediation agreement entered into by the parties and received by the impartial hearing officer resolves all of the issues formerly in dispute, the impartial hearing officer will cancel the due process hearing previously scheduled and notify the parties in writing of the cancellation.

(2) If the parties reach no mediation agreement, or the agreement entered into resolves only part of the issue(s) in dispute, the mediator will notify the impartial hearing officer accordingly, and the previously scheduled due process hearing must proceed as scheduled.

(3) A mediation agreement signed by both parties will be implemented as the final resolution of all matters previously in dispute that have been resolved by the mediation process.

### ***FORMAL APPEAL: IMPARTIAL DUE PROCESS HEARING***

### **320.28 RIGHT TO REQUEST AN IMPARTIAL DUE PROCESS HEARING**

Any applicant or eligible individual for vocational rehabilitation services may request an impartial due process hearing with or without prior supervisory review or mediation or, having had a prior supervisory review or mediation, if **a final resolution of the matters in dispute is not achieved by either of those processes.**

### **320.29 MANDATORY PARTICIPATION**

If the review progresses to the impartial due process hearing stage, participation in the hearing is mandatory on the part of the Vocational Rehabilitation Counselor and any other individual(s) representing the Vocational Rehabilitation Program.

*[REQUIRED PRACTICE. The Vocational Rehabilitation Counselor and other staff representing the Vocational Rehabilitation Program are expected to be fully prepared to*

*present a rationale for the disputed decisions made and actions taken with respect to service provision and to present proper supporting documentation consistent with program policy and practice for all decisions and actions.]*

### **320.30 NATURE AND SCOPE OF THE HEARING**

An impartial due process hearing is an adversarial, evidentiary procedure similar to an informal court trial presided over by an impartial hearing officer. The rules of discovery and evidence are followed, and the proceedings are recorded.

### **320.31 FUNCTIONS OF THE HEARING OFFICER**

Impartial due process hearings must be presided over by an impartial hearing officer, the functions of the hearing officer being to direct the proceeding and to render a decision. Decision-making authority in impartial due process hearings rests with the hearing officer, based applicable law, agency policy, and the testimony and evidence presented.

### **320.32 RIGHT TO SUBMIT AND EXAMINE EVIDENCE**

During any impartial due process hearing, both parties must be provided with an opportunity to present testimony and evidence (including the testimony of witnesses) supportive of their positions, and must be permitted an opportunity to examine and respond to the testimony and evidence presented by the other party.

### **320.33 CONDUCT OF THE HEARING**

The impartial hearing officer presides over the presentation of testimony evidence, which must be presented under oath, and then renders a decision based on applicable law and policy and the testimony and evidence presented.

### **320.34 IMPARTIAL HEARING OFFICER'S DECISION**

The impartial hearing officer must:

- (1) base his or her **findings of fact and decision** on the applicable provisions of the Rehabilitation Act, federal and state regulations, the State Plan, and Vocational Rehabilitation Program policy and practice; and
- (2) within 30 calendar days of the completion of the impartial due process hearing, provide a written report of all findings of fact and the decision rendered **to the parties and the Director of the VR program**.

*[REQUIRED PRACTICE. **The sole authority of the Impartial Hearing Officer is to find and render a decision as to whether the determination made or action taken by the Counselor or other program authorities was or was not consistent with the law, policy, and practices current, and reasonable in terms of the information available, at the time of the determination or action. It is not the purpose of the IHO to find an alternative resolution of the issue(s) by setting aside any provision of law or program policy and practice, requiring compromise or alternative solutions (which is properly the purpose of mediation), or to order further actions, except in those cases in which it is found that the determination made or action taken was inconsistent with the applicable law, policy, and practices.]***

### **320.35 FINALITY OF THE HEARING OFFICER'S DECISION**

The hearing officer's decision is final and must be implemented. If either party requests an impartial administrative review in accordance with section 320.36 or brings a civil action under section 320.40 of this chapter, the decision must be implemented nonetheless, until the outcome of the impartial administrative review or court action is made known.

#### ***FORMAL APPEAL: IMPARTIAL ADMINISTRATIVE REVIEW***

### **320.36 RIGHT TO REQUEST AN IMPARTIAL ADMINISTRATIVE REVIEW**

Any applicant or eligible individual who is dissatisfied with the decision rendered by an impartial hearing officer in accordance with section 320.34 of this chapter may request an impartial administrative review of the decision by making written request for such a review with the Secretary of the Indiana Family and Social Services Administration (FSSA), as directed in the Hearing Officer's decision.

*[REQUIRED PRACTICE. If, however, a request for impartial administrative review is made by a staff person employed by the Vocational Rehabilitation Program, the request must be made by the appropriate Region Manager and addressed in*

*writing to the Director of the Vocational Rehabilitation Program, who will determine whether or not the matter will proceed to administrative review.]*

### **320.37 FORM AND TIMELINESS OF THE REQUEST**

The written request for an impartial administrative review described in section 320.36 of this chapter must be submitted by the requesting party in accordance with the instructions provided by the impartial hearing officer, and must be postmarked within 20 calendar days of the mailing of the impartial hearing officer's decision.

*[REQUIRED PRACTICE. Requests not made in writing by the prescribed method or failing to meet the timeliness requirement will not be reviewed.]*

### **320.38 CONDUCT OF THE REVIEW**

If an administrative review of the impartial hearing officer's decision is requested, the administrative review of the hearing officer's decision must be conducted by the Secretary of FSSA in consultation with other legal and program authorities, and:

- (1) must provide both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter(s) in dispute;
- (2) cannot overturn or modify any hearing officer's decision, or any part of a decision, that favors the applicant or eligible individual, unless the Secretary concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is contrary to the Rehabilitation Act, federal or state regulations, the approved State Plan, or Vocational Rehabilitation Program policies and practice;
- (3) upon completing a thorough review of the entire hearing record and any additional information submitted, must make an independent, final decision and provide a report of the decision in writing, including a full report of the findings and the statutory, regulatory or policy grounds for the decision, to the parties within 30 calendar days of the request for administrative review submitted under section 320.36 of this chapter; and

(4) cannot delegate the responsibility for making the final decision under paragraph (3) of this section to any officer or employee of the Division of Disability and Rehabilitative Services (DDRS).

### **320.39 FINALITY OF THE SECRETARY'S DECISION**

The decision rendered by the Secretary of FSSA in accordance with PPM 320.38(3) is final and must be implemented. If either party brings a civil action under section 320.40 of this chapter, the decision rendered by the Secretary of FSSA must be implemented until a final decision is rendered by the court.

## ***CIVIL ACTION***

### **320.40 RIGHT TO BRING CIVIL ACTION**

Any party who is dissatisfied with the findings and decision rendered by the impartial hearing officer in accordance with section 320.34 of this chapter or with the findings and decision of the Secretary of FSSA rendered in accordance with the provisions of section 320.38(3) may bring a civil action with respect to the matter in dispute. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the disputed amount.

### **320.41 COURT DECISION**

In any action brought under section 320.40 of this chapter, the court:

- (A) must be provided with all records related to the impartial due process hearing and the impartial administrative review process;
- (B) may hear additional evidence at the request of any party; and
- (C) will render a final decision based on the preponderance of the evidence, granting the relief that the court determines to be appropriate.

***RECORD OF SERVICES DOCUMENTATION REQUIREMENTS*****320.42 RECORD OF SERVICES CONTENT REQUIREMENTS**

(1) The record of services and, as applicable, the Central Support Services mediation and appeal file of each applicant and eligible program participant must include:

(A) information demonstrating that the notifications required under section 320.04 of this chapter have been provided;

(B) any written notice of intent to be represented by legal counsel, as described in section 320.07;

(C) documentation explaining all expenses paid for or reimbursed by the Vocational Rehabilitation Program for review-related costs, as described in section 320.10 of this chapter;

(D) a description of any resolution reached between the individual or the individual's representative with the Vocational Rehabilitation Counselor per section 320.11;

(E) information demonstrating that the responsibilities of the Vocational Rehabilitation Counselor, the individual or the individual's representative, and the Area Supervisor or his or her designee under sections 320.13, 320.14, and 320.15, respectively, have been met, including, but not limited to, the original and copies of the initial written request submitted by the individual described in section 320.14 and copies of the completed and signed Request for Mediation and Appeal form described in section 320.16;

(F) copies of the notifications of assignment sent to each mediator and impartial hearing officer, as required under section 320.16 of this chapter;

(G) copies of all correspondence and communications between the individual and assigned mediators and impartial hearing officers, including, but not limited to, all notices of scheduled and rescheduled mediation and impartial due process hearings, consistent with section 320.17;

(H) a description of any resolution reached through an informal supervisory review, as described in section 320.20;

(I) a copy of the signed confidentiality statement pertaining to mediation, as required under section 320.24;

(J) any mediation agreement reached in accordance with section 320.26;

(K) any notification of cancellation for the impartial due process hearing, as required under section 320.27(1);

(L) copies of all exhibits submitted by the parties during due process hearings in accordance with section 320.32 of this chapter;

(M) the written decision rendered by any impartial hearing officer, per section 320.34;

(N) any request for an impartial administrative review, per section 320.36; and

(O) the Secretary's decision rendered in accordance with section 320.38.

(2) A record of each appeal must be maintained by Central Support Services which includes all written requests for review together with copies of all correspondence, forms, notices, requests for rescheduling, exhibits, agreements, findings of fact, decisions, rulings, recordings and transcripts of proceedings, or other materials pertaining to any mediation or impartial due process hearing conducted and the resolution reached regarding each disputed decision or action.

### **320.43 INFORMATION TECHNOLOGY SYSTEM COMPLIANCE**

All required information, data, and documents must be incorporated and maintained in the record of services for the individual in a manner consistent with Indiana Rehabilitation Information System (IRIS) requirements.



[AUTHORITY: Federal regulations 34 CFR 361.5(b)(25), (36); 361.36(e)(2); 361.43(b); 361.45(c)(2)(iii); 361.47(a)(11); 361.57; and the Indiana Alternative Dispute Resolution Rules, §§1.3 and 2.5, *et seq.*]

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